IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 2641 of 2006(A)

AGAINST THE ORDER DATED / / IN CRMP.2418/05 IN CC.737/2003 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

.....

REVN. PETITIONER: CRL.REVN.PETITIONER/1ST ACCUSED

O.VASUDEVAN,
ASST. GENERAL MANAGER REGION-II,
STATE BANK OF INDIA, ZONAL OFFICE,
TRIVANDRUM.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

RESPONDENTS: COMPLAINANT

---

1. C.B.I.,
SPECIAL POLICE ESTABLISHMENT,
COCHIN BRANCH, ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, COCHIN-31.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.R.P.NO. 2641 OF 2006

Dated this the 28th day of November, 2006

ORDER

The petitioner is the 1st accused in a prosecution launched on the basis of a final report submitted by the respondent/C.B.I. for the offences punishable under Sec.120B read with Secs.420, 467, 468 and 471 of the IPC. Altogether there are five accused persons. The petitioner/1st accused is the Assistant General Manager of the State Bank of India. Accused No.2 is the Divisional Manager – subordinate to the petitioner. Accused No.3 is the loanee/consignor. Accused No.4 is the carrier and accused No.5 is the consignee.

2. The crux of the allegations is that forged documents were produced before the bank for discounting by the 3rd accused. The said documents were produced before the bank by the 3rd accused – loanee/consignor. Alterations/forgery were effected in the documents issued. It is alleged that all the five accused persons entered into a conspiracy. Discounting of the document was effected in pursuance of such conspiracy and unjust loss were suffered by the bank by

such culpable conduct indulged in by accused 1 to 5.

3. The petitioner/1st accused pleaded for discharge before the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate by the impugned order rejected the prayer for discharge and held that charges are liable to be framed under Sec.240 of the Cr.P.C. Though not strictly necessary, a detailed speaking order is seen passed.

4. Arguments have been heard at length. As this Court was not satisfied that incriminating materials whatsoever are available to presume that the 1st accused has committed any offence alleged against him, the respondent/C.B.I. was directed to file a statement specifically enumerating the circumstances which would point to the complicity of the 1st accused. The learned counsel for the petitioner submits that even if the entire case of the prosecution were accepted, there is total and complete absence of circumstances which can indicate, even remotely, the complicity of the petitioner/1st accused. Except that, he had accepted the note submitted by the 2nd respondent in the ordinary and usual course of business and had approved the transaction, there is absolutely no scintilla of material to suggest the complicity of the 1st accused. In these

circumstances, it would be an abuse of the criminal adjudicatory process to compel the 1st accused to stand trial for the offences alleged against him.

5. I have been taken through all the relevant inputs. The learned Standing Counsel for the C.B.I. submits that to drive home the charge against the 1st accused, the prosecution wants to rely on the oral statements of C.Ws.5, 10, 11 and 14 submitted along with the report under Sec.173 of the Cr.P.C. I have been taken through the notes of the statements recorded from C.Ws.5, 10, 11 and 14.

6. It is significant that there is no allegation even that the petitioner knew or was conscious of the alleged forgery of the documents. C.W.11, who processed the documents, the prosecution appears to accept, could not evidently detect the alleged forgery. There is absolutely nothing to indicate that the petitioner also was able to know or was conscious of the alleged forgery in the relevant documents committed by the 3rd accused. There is no case counter for the prosecution.

7. It is also significant to note that there is absolutely no allegation even that the petitioner had any opportunity to meet accused 3, 4 and 5 or had any special interest or ulterior motive

to help the 3rd accused. The entire materials, when scanned, does not at all reveal that there was any special relationship between the 1st accused and the 3rd accused or that the 1st accused had any intention to help the 3rd accused out of the way. It is significant that there is not even an allegation that any illegal gratification was obtained by the 1st accused from the 3rd accused or any other accused involved in the case.

8. Thus, the crux of the allegations is only that the 1st accused sanctioned the transaction on the basis of a note submitted to him by the 2nd accused. That loan become sticky. Then the forgery was detected. Except this, there is absolutely no allegation whatsoever. It is pointed out by the learned Standing Counsel for the C.B.I. that the sanctioning done by the 1st accused must, at least, at this stage, be held to be suspicious or not straight. It is contended that the loanee did not have any facility for D.D.B. and the sanctioning of Rs.3,40,095/- has been done without any authority.

9. The learned counsel for the petitioner submits that in his capacity as the person competent to sanction the loan transaction, the 1st accused has discretion and that discretion was honestly exercised by the 1st accused. In the total absence

of any allegation or circumstances to show that any ulterior or mala fide motive prompted the 1st accused, the mere fact that the discretion happened to be exercised by him erroneously, assuming the same to be erroneous discretion, cannot and should not expose him to the trauma of a criminal prosecution.

10. I find force in the submission of the learned counsel for the petitioner. The notes prepared by C.W.11 and the 2nd accused were placed before the 1st accused as is evident from the document dated 27/3/1998. That is the "note on bill received for negotiation". That note clearly shows that the sanctioning of the transaction is justified as the unit enjoyed a total facility of Rs.59 lakhs and all that was required was the increase of the bill limit to Rs.34 lakhs.

11. I shall, for a moment, assume that the discretion was not exercised by the 1st accused properly. But was there any contumacious or culpable intention? This is the crucial question that arises for consideration. The learned Standing Counsel for the C.B.I. was requested to explain whether statement of any superior officer or other officer versed in the procedure followed by bank has been recorded which would show that normally and ordinarily such a discretion should not have been exercised

honestly by the petitioner. Significantly, there is absolutely no material collected to show that the conduct of the 1st accused in sanctioning the transaction as per document dated 27/3/98 reveals any contumacious or culpable intention on the part of the petitioner. Within the sanctioning limit, a transaction was approved by the petitioner. There is no allegation whatsoever that he is not competent to do the same or that he had resorted to that exercise for any ulterior or mala fide motives. The mere allegation appears to be that the loanee had used a forged document, the discretion was exercised in his favour and the loan later become sticky consequent to non-payment.

12. The totality of the circumstances suggest unmistakably that the respondent/prosecution has not placed before court any material which can lead to a safe finding that the threshold satisfaction which must be entertained by the court at the stage of Sec.240 of the Cr.P.C. can be entertained. I am satisfied that this is an eminently fit case where the petitioner should not have been subjected to the further trauma of facing a criminal prosecution. There are no circumstances to hold that the allegation of culpable indiscretion against the petitioner can be held or presumed to be true. The allegation appears to be

groundless.

13. It is true that at the stage of Sec.239/240 of the Cr.P.C. meticulous evaluation of the materials or consideration of the probable defences need not be undertaken. But at the same time, unless there are satisfactory indications to deduce or infer the culpable contumacious liability, it will be a traversity of justice to compel the accused to face the trauma of a criminal prosecution. As this Court was not satisfied that the threshold satisfaction can be entertained and a perusal of the statement filed by the respondent and even submissions made by the Standing Counsel did not satisfy the court, personal presence of the Investigating Officer was insisted to explain facts to the court and to doubly assure that all relevant materials were brought to the notice of the court. This was done to ensure that the mere exercise of an erroneous discretion is not conferred and equated with culpable indiscretion. I am satisfied that the petitioner does not deserve to be inflicted such trauma.

14. In the result:

(a) This Crl.R.P. is allowed.

(b) The impugned order of the learned Chief Judicial Magistrate is set aside.

(c) The petitioner/1st accused is found entitled to be discharged under Sec.239 of the Cr.P.C. He is, accordingly, discharged.

(R. BASANT, JUDGE)

Nan/